

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

UNITED STATES OF AMERICA

VS.

**CRIMINAL ACTION NO. 3:14cr62-DPJ-LRA
(3:13-mj-160-LRA)**

JOSEPH NAMIHIRA

DEFENDANT

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

The parties came before the undersigned United States Magistrate Judge on March 4, 2014, for a hearing to determine the competency of Defendant Joseph Namihira to assist in his own defense in the above styled cause. The undersigned considered the motion of the United States of America under the provision of Title 18, United States Code, Section 4241 (c) and (d), as well as the statements of counsel. In the undersigned's opinion, the preponderance of the evidence presented, including the report, under seal, submitted to the Court by the Metropolitan Detention Center in Los Angeles, California, proves that the defendant is presently suffering from a mental disease or defect rendering him mentally incompetent, as defined in 18 U.S.C. §4241(d).

Based upon these findings, the undersigned recommends that an Order should be entered by this Court containing the following directives:

1. Pursuant to 18 U.S.C. §4241 (d), Defendant Namihira should be transported by the United States Marshal and committed to the custody of the Attorney General for placement in a suitable facility designated to perform the

examination and evaluation for a reasonable period of time, not to exceed four months, as is necessary to determine whether there is a substantial probability that in the foreseeable future Defendant will attain the capacity to permit the proceedings to go forward; and, for an additional reasonable period of time until defendant's mental condition is so improved that a trial may proceed.

2. That the purpose of the evaluation shall be for conducting a psychiatric or psychological examination of Defendant in accordance with the Order by a licensed or certified psychiatrist and/or clinical psychologist.
3. That Defendant be ordered to submit to such examination pursuant to Rule 12.2(c)(I)(A).
4. That the examiner designated to conduct such examination shall, pursuant to 18 U.S.C. § 4241, 4242 and 4247, file with the Court as soon as possible after the completion of such examination, a report of the examination with copies provided to the Court, counsel for Defendant, and counsel for the United States, and said report shall include Defendant's history and present symptoms, a description of the psychiatric, psychological, and medical tests that were employed and their results, the examiner's findings, the examiner's opinions as to diagnosis, prognosis and whether there is a substantial probability that in the foreseeable future Defendant will attain the capacity to permit the proceedings to go forward.

5. That the Attorney General shall report to the Court during this time on the progress of the evaluation, and
6. That Defendant be returned to the custody of the United States Marshal at the completion of the evaluation ordered herein. Defendant shall thereafter remain in the custody of the Marshal, pending further orders of this Court.

The parties are hereby notified that failure to file written objections to the proposed findings, conclusions, and recommendations contained within this report and recommendation within fourteen (14) days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the District Court. 28 U.S.C. § 636; Fed. R. Civ. P. 72(b); *Douglass v. United Services Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996).

The parties have affirmed to the undersigned that they have no objection to the recommended relief. Therefore, counsel for the parties may waive this fourteen- day period and request that the Order described herein be entered.

Respectfully submitted, this the 11th day of March 2014.

S/ Linda R. Anderson
UNITED STATES MAGISTRATE JUDGE